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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,240	02/27/2002	Raymond R. Rackley	54459-237216	2031
25764	7590	05/13/2005	EXAMINER	
FAEGRE & BENSON LLP PATENT DOCKETING 2200 WELLS FARGO CENTER MINNEAPOLIS, MN 55402			THANH, LOAN H	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/084,240

Applicant(s)

RACKLEY ET AL.

Examiner

LoAn H. Thanh

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,12-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-6,12-14,16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/16/05 has been entered.

Election/Restrictions

Applicant is reminded of the election of Group I to the device as confirmed by applicant on 09/01/05.

Response to Amendment

The declaration filed on 01/18/05 under 37 CFR 1.131 is sufficient to overcome the 102 (e) rejection of Stone (6,666,848)reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,5-6, 12-14, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawin et al. (USPN 5,792,478) in view of Johnson (USPN 5,893,839) and further in view of Hill (USPN 6,258,067).

Lawin et al. disclose a kit comprising injection with the use of a syringe and needle combination of a plurality of discrete coated particles in a carrier having dimensions between 200 and 500 microns. See abstract and columns 2-4. However, Lawin et al. does not disclose a bend needle. Johnson (5,893,839) discloses a syringe for delivery of treatment material with a needle having a length of approximately of about 10cm (approximately 4 inches) in obese people. Johnson discloses the length and the arc to be variable depending on the patient and the site of the target location to those of ordinary skill in the art of delivering treatment material to the body with a syringe and needle combination. It would have been obvious to one of ordinary skill in the art of delivering treatment material to the body to use the syringe of Johnson as the delivery device to deliver the bulking agent of Lawin.

With respect to claims 6 and 16, Lawin in view of Johnson disclose the invention as substantially claimed. See above. They disclose a syringe and needle combination delivery device. However, they do not disclose a depth shield. Hill discloses a syringe having a bend needle with a depth shield to prevent further penetration of the needle in the analogous art of syringes. It would have been obvious to one of ordinary skill in the art to modify the syringe/ delivery device of Lawin et al. in view of Johnson with a shield

as taught by Hill in order to prevent further penetration of the needle to the desired location or to prevent puncturing and damaging on non-target site.

Response to Arguments

Applicant's arguments filed 02/16/05 have been fully considered but they are moot further in view of the new rejection. Further, Applicant is reminded that the claims are directed to apparatus claims. The device of the prior art is capable of performing the intended use.

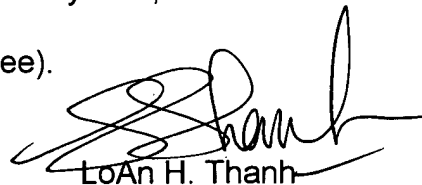
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (571) 272-4966. The examiner can normally be reached on Mon. - Fri. (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'LoAn H. Thanh', is positioned above the printed name.

LoAn H. Thanh
Primary Examiner
Art Unit 3763

LT